IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3158 OF 2006

Goldfilled Mercantile Company, Petitioners

Vs

Miss Maya Jamnaprasad Jaisingh & Ors Respondents.

Shri Dinyar Madon, senior advocate, with Mr Vaibhav A Sugdare i/by Ms Yasmin Bhanusali & Co, for the petitioners.

Mr M.M.Vashi, for the respondents.

CORAM : D.B.BHOSALE,J.
DATE : 19.10.2006
PC:

1. The order dated 13.4.2006 passed by the City Civil Court dismissing the Notice of Motion No.1609 of 2003 in S.C.C.Suit No.1099 of 2003 taken out by the petitioner-plaintiff, is under challenge in the present writ petition under Article 227 of the Constitution of India. The petitioners-plaintiffs have filed a suit under section 6 of the Specific Reliefs Act seeking vacant and peaceful possession of the land bearing CTS no.483 admeasuring approximately 614 sq.meters and portion of CTS no.477 admeasuring 110 sq.meters situate at Chakala, Taluka Andheri, Mumbai Suburban District. They have also prayed for mandatory injunction directing the respondents to remove and/or demolish the shed

constructed on the disputed property. The claim of the petitioners is based on the allegation that on or about 8.2.2003 at around 1 pm some 20-30 persons, under the instructions of the respondent-defendant no.1, broke down the portion of the compound wall between plot bearing CTS nos 483 and 484 to gain access to the disputed property in their (petitioners-plaintiffs') possession. According to the plaintiffs, the plot of land bearing CTS nos 477 and 483 had boundary wall and the petitioners were in exclusive possession thereof since 40 years before they were dispossessed on 8.2.2003.

2. In the Notice of Motion, the petitioners made the following prayers:

> (a) that pending the hearing and final disposal of the suit, the Court Receiver, High Court, Mumbai or some fit or other person be appointed as Receiver in respect of the disputed property together with all powers under Order 40, Rule 1 of the Code of Civil Procedure Code, 1908;
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> (b) that pending the hearing and final disposal of the suit, the defendant by himself, his servant and agents be restrained from in any manner alienating , encumbering, transferring or creating any third party rights or selling or disposing off or parting with possession of the disputed property or any part or portion thereon;"

The City Civil Court, after considering the entire material on record, has recorded a categoric finding that merely because the compound wall separating two lands bearing CTS nos 483 and 484, was demolished, does not mean/amount to dispossession of the petitioners from CTS no.483. The Court has further observed that there is no prima facie case in favour of the petitioners-plaintiffs to show that they were holding the land CTS no.483 by adverse possession and that, except the allegation and the pleadings, there is no document on record to show that they were in possession of CTS no.483 on 8.2.2003. This finding and the order dismissing the motion taken out by the petitioners is under challenge in the present writ petition. I heard the learned counsel for the parties for quite some time.

3. Mr Madon, learned senior counsel for the petitioners, at the outset, submitted that the land CTS no.483 was land-locked and had no independent access except through city survey no.477, which is admittedly owned by the petitioners. Admittedly, respondent no.1 is the owner of CTS no.483 whereas respondent nos 2 to 6 are the owners of CTS no.484. The CTS No.483 was transferred by respondent no.1 to respondent nos 2 to 6 by executing a conveyance. Respondent nos 2 to 6, in turn, entered into a development agreement with

respondent nos.7 and 8 and handed them over the possession of CTS no. 483 for development. Mr Madon, therefore, submitted that CTS no.483 was in exclusive possession of the petitioners and they had constructed one wall covering CTS nos 483 and 477 and since 40 years prior to their dispossession nobody claimed any right whatsoever over the CTS no.483 and they were using the same. On the other hand, Mr Vashi, learned counsel for the respondents, invited my attention to several documents annexed to the petition to contend that even if it is assumed that CTS no.483 was land-locked and had no access from the main road,does not mean that they were not in possession of the same and that the petitioners can claim exclusive possession thereof on the basis of the compound wall.

4. I perused the documents which form part of the record. The petitioners had written a letter dated 2.4.2002 addressed to the Land Survey Officer. The first paragraph of the said letter reads thus :

> "On 28th March, 2002 at 2.00 pm your M.S. Mr Kabir had come along with two of his assistants **for surveying property adjacent to us i.e. plot no.483. Our watchman Mr Tiwari has requested them not to enter our premises without our knowledge and prior intimation**. Your Surveyor

> has taken a stand that he is from the Government and he will enter any premises for measurement and cannot be stopped and he will not wait for anybody. **After stating as above he along with the representative of the neighbouring plot entered our premises** and took some measurements and made his demarcation at the site. On receipt of telephone call from the watchman we had rushed to the site to know what has happened but the Surveyor Mr Kabir has already left."

The petitioners in this letter have clearly mentioned that one Kabir from the office of the Land Survey had visited along with two of his assistance for surveying the property i.e. CTS no.483 adjacent to the petitioners' plot no.477. In this letter they have not claimed any right whatsoever in respect of plot no.483. Thereafter, on 20.5.2002, for the first time, the petitioners in the letter addressed to land survey officer, mentioned that they are in exclusive possession of CTS no.483 since 40 years. I perused one another letter dated 3.6.2003 written by respondent no.1 to the City Survey Officers. In this letter, respondent no.1 had specifically stated that the land CTS no.483 is owned and possessed by him and he has been paying the NA assessment every year regularly and he asserted his possession over CTS no.483 as on 3.6.2002,i.e. much prior to the alleged dispossession on 8.2.2003. There is yet another letter dated 8.3.2002 annexed to the petition, addressed to respondent no.1. That letter

further supports the case of respondent no.1 that he was in possession on 8.3.2003. The City Civil Court has taken all that into consideration and in my opinion, has rightly dismissed the notice of motion for the reasons stated in the order. Merely because CTS 483 is land-locked does not mean that the petitioners were in exclusive possession thereof or the respondent no.1 was not in possession of the said land. Except the allegations and the pleadings the petitioners have not produced a single document in support of their claim in respect of CTS 483. The mere demolition of wall is not sufficient to hold that the petitioners were in exclusive possession of CTS 483 and/or that respondent no. 1 was not in possession thereof at all. In my opinion, the impugned order does not suffer from any infirmity insofar as CTS 483 is concerned, warranting interference under Article 227 of the Constitution of India. Hence, the petition, insofar as CTS 483 is concerned, stands rejected.

5. Insofar as the controversy in respect of CTS no.477 is concerned which, according to the petitioners, is encroached upon by the respondents and in particular respondent nos. 7 and 8 to the extent of 110 sq.meters. Mr Vashi, learned counsel for the respondents, submitted

that they have not encroached upon CTS no.477 at all. He further submitted that if they are found to be in possession of a portion of CTS no.477, the respondents are prepared to surrender that to the petitioners. He submitted that the respondents have no objection for appointment of the city survey officer to survey the plots CTS 477 and 483 to find out whether they have encroached upon CTS 477. He further submitted that the respondents undertake to this court that they shall surrender the portion of CTS 477, if any, found to be in the possession after the survey without waiting for orders from the court. Mr Vashi submitted that whatever development they propose to carry out would be only on CTS no.483 and that the respondents have no objection even if the development and creation of third party rights is also made subject to outcome of the suit. In view of the submissions made by Mr Vashi, I propose to pass the following order, insofar as CTS no.477 is concerned.

(a) City Survey Officer, Vile Parle, is directed to survey land CTS no.477 and 483 and fix the boundary between CTS 477 and 483 within 10 weeks from the date of receipt of this order. The respondents shall bear cost of the survey to be carried out by the city survey officer. The city survey officer shall supply copies of

the report to the parties and shall also forward the report to the trial court in sealed cover.

(b) Respondent nos 7 and 8 are directed to produce a copy of this order before the concerned City Survey officer within three weeks from the date of receipt of the order. The survey of the lands, fixing the boundary between the plots of lands will be done by the city survey officer after giving notice to both the sides. In case, on survey, it is found that the respondents are in possession of any portion of the land CTS no.477, they shall surrender the same to the petitioners and shall obtain possession receipt thereof within two weeks from the date of receipt of the survey report. The respondents shall not carry out any development whatsoever on the disputed portion between CTS 477 and 483 till the survey is done and the report thereof is submitted by the city survey officer.

(c) The development, if any, carried out by the petitioners on the land bearing CTS no.483 after the survey and fixation of the boundary as aforestated, the construction of building/s by respondent nos 7 and 8 and creation of third party rights in respect thereof will be subject to the result of suit no.1099 of 2003 pending in the city civil court and that the respondent shall

not claim equities.

(d) Parties are directed to maintain status-quo till the survey, as aforestated, is done by the city survey officer.

(e) In view of the facts and circumstances of the case, the trial court shall endeavour to dispose of the suit as expeditiously as possible and preferably within a period of one year from the date of receipt of this order.

(f) The writ petition is disposed of in aforesaid terms.

(g) At this stage, Mr Sukhdare, learned counsel for the petitioner, prays for stay of the direction to carry out the survey. Mr Vashi opposed the prayer. The prayer for stay is rejected.

(D.B.BHOSALE,J.)